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LENNOX HEARTH PRODUCTS INC.; LENNOX  
8 INTERNATIONAL INC.; LENNOX INDUSTRIES  
INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

13 KIRK KEILHOLTZ and KOLLEEN  
14 KEILHOLTZ for themselves and on behalf  
of those similarly situated,

15 Plaintiffs,

16 v.

17 LENNOX HEARTH PRODUCTS INC.;  
18 LENNOX INTERNATIONAL INC.;  
LENNOX INDUSTRIES; and DOES 1  
through 25, Inclusive,

19 Defendants.  
20

Case No. 4:08-cv-00836-CW (JCS)

**STIPULATION AND ~~PROPOSED~~  
ORDER SETTING NEW BRIEFING AND  
HEARING SCHEDULE ON CLASS  
CERTIFICATION MOTION**

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21 TO THE COURT AND ALL ATTORNEYS OF RECORD:

22 By and through their counsel of record, Plaintiffs Kirk Keilholtz and Kolleen Keilholtz  
23 (collectively "Plaintiffs"), and Defendants Lennox Hearth Products Inc., Lennox International  
24 Inc. and Lennox Industries Inc. (collectively "Defendants") hereby stipulate to the following:

25 1. On July 9, 2009, the court issued a written order providing that any hearing on  
26 class certification and subject matter jurisdiction issues would be conducted at 2:00 p.m. on  
27 Thursday, November 12, 2009. The court also set the following briefing schedule to address  
28 class certification and subject matter jurisdiction issues:

Party	Filing	Deadline
Plaintiffs	Motion for Class Certification	August 28, 2009
Defendants	Opposition to Motion for Class Certification and Cross-Motion Addressing Class Certification and Subject Matter Jurisdiction (“Cross-Motion”)	September 28, 2009
Plaintiffs	Reply in Support of Motion for Certification and Opposition to Cross-Motion	October 12, 2009
Defendants	Surreply	October 26, 2009

2. Plaintiffs and Defendants have agreed, and hereby stipulate, to extend the briefing schedule on the Motion for Class Certification and Cross-Motion by approximately two weeks, and to extend the hearing on these Motions by three weeks.<sup>1</sup> Specifically, this stipulation proposes that the court, subject to its availability, reschedule the hearing on the Motion for Class Certification and Cross-Motion for 2:00 p.m. on Thursday, December 3, 2009, and order the following revised briefing schedule:

Party	Filing	Deadline
Plaintiffs	Motion for Class Certification	August 28, 2009
Defendants	Opposition to Motion for Class Certification and Cross-Motion	October 12, 2009
Plaintiffs	Reply in Support of Motion for Certification and Opposition to Cross-Motion	October 26, 2009
Defendants	Surreply	November 9, 2009

3. The parties agreed to this extension due to issues with deposition scheduling. Specifically, back in mid-August, Defendants noticed the depositions of named Plaintiffs Kirk Keilholtz and Kolleen Keilholtz (collectively “Keilholtzs”), as well as the depositions of putative class members Rich and Donna Perry (collectively “Perrys”). At the request of Plaintiffs, who had conflicts with the noticed deposition dates, Defendants agreed to postpone the depositions of

<sup>1</sup> A two week extension of the original hearing date would fall on Thanksgiving, a court holiday.

1 the Keilholtzs and Perrys until Tuesday, September 15, 2009, and Thursday, September 17, 2009,  
2 respectively. On Friday, September 11, 2009, Plaintiffs informed Defendants that their counsel  
3 could not attend the depositions of the Keilholtzs and Perrys due to trial and other commitments.  
4 After meeting and conferring on this issue, the parties agreed to reschedule the depositions of the  
5 Perrys for Thursday, September 24, 2009, and the Keilholtzs for Friday, September 25, 2009,  
6 subject to, and on the condition that, the parties would stipulate to the modified briefing and  
7 hearing schedule set forth herein.

8 4. Defendants contend that the depositions of the Keilholtzs and Perrys are essential  
9 to their ability to oppose the Motion for Class Certification. In light of this fact, the parties have  
10 agreed to the modified briefing and hearing schedule set forth herein so that Defendants have  
11 adequate time to depose the Keilholtzs and Perrys, obtain certified copies of the transcripts, and  
12 incorporate the testimony into their opposition to the Motion for Class Certification.

13 5. In proposing a new hearing date of December 3, 2009, Defendants note that their  
14 lead trial counsel, William Warne, is currently scheduled to begin a three-week jury trial in  
15 Sacramento Superior Court on November 9, 2009. Mr. Warne anticipates that this trial will be  
16 completed on or about November 30, 2009. Additionally, Defendants note that their counsel  
17 Meghan Baker will be unavailable due to maternity leave starting on or about October 30, 2009,  
18 through March 1, 2010; if necessary, she might be able to make herself available for a hearing  
19 date in December, at the very earliest.

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1 **IT IS HEREBY STIPULATED:**

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4 DATED: September 17, 2009

DOWNEY BRAND LLP

5  
6 By: /s/ William R. Warne

7 WILLIAM R. WARNE  
8 Attorney for Defendants  
9 LENNOX HEARTH PRODUCTS INC.  
10 LENNOX INTERNATIONAL INC.  
11 LENNOX INDUSTRIES INC.

12  
13 DATED: September 17, 2009

ARNOLD LAW FIRM

14 By: /s/ Kirk J. Wolden (as authorized on 9/16/09)


15 KIRK J. WOLDEN  
16 Attorney for Plaintiffs  
17 KIRK KEILHOLTZ and KOLLEEN  
18 KEILHOLTZ for themselves and on behalf of  
19 those similarly situated  
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**IT IS SO ORDERED:**

The court, having considered the Stipulation of the parties and good cause appearing, hereby orders that the Motion for Class Certification and Cross-Motion be heard on Thursday, December 3, 2009, at 2:00 p.m. in Courtroom 2, before the Honorable Claudia Wilken. Additionally, the court hereby orders the following briefing schedule on the Motion for Class Certification and Cross-Motion:

Party	Filing	Deadline
Plaintiffs	Motion for Class Certification	August 28, 2009
Defendants	Opposition to Motion for Class Certification and Cross-Motion	October 12, 2009
Plaintiffs	Reply in Support of Motion for Certification and Opposition to Cross-Motion	October 26, 2009
Defendants	Surreply	November 9, 2009

Dated: September 18, 2009

By:   
HONORABLE CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE,  
NORTHERN DISTRICT OF CALIFORNIA